

Office of the Secretary of Defense

§ 105.3

Department of Justice may appear on behalf of, and act as attorney for, the complainant, and commence an action for appropriate relief, or the individual may commence an action on his or her own behalf in the appropriate Federal district court.

b. The district court hearing the complaint can require the employer to:

- (1) Comply with the law;
- (2) Compensate the person for any loss of wages or benefits suffered; and
- (3) If the court determines that the employer willfully failed to comply with the law, pay the person an amount equal to the amount of lost wages or benefits as liquidated damages.

c. A person may file a private suit against an employer without the Secretary of Labor's assistance if he or she:

- (1) Has chosen not to seek the Secretary's assistance;
 - (2) Has chosen not to request that the Secretary refer the complaint to the Department of Justice; or
 - (3) Has refused the Department of Justice's representation of his or her complaint.
- d. No fees or court costs shall be charged or taxed against any person filing a claim. The court may award the person who prevails reasonable attorney fees, expert witness fees, and other litigation expenses.

2. Federal Government as the Employer.

a. The same general enforcement procedures established for private employers are applied to Federal Executive Agencies as an employer; however, if unable to resolve the complaint, the Secretary of Labor shall refer the complaint to the Office of Special Counsel, which shall represent the individual in a hearing before the Merit Systems Protection Board if reasonably satisfied that the individual is entitled to the rights and benefits sought. The claimant also has the option of directly filing a complaint with the Merit Systems Protection Board on his or her own behalf.

b. A person who is adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision.

3. Federal Intelligence Agency as the Employer. An individual employed by a Federal Intelligence Agency listed in subparagraph I.1. of this appendix, may submit a claim to the inspector general of the agency.

APPENDIX B TO PART 104—SAMPLE EMPLOYER NOTIFICATION OF UNIFORMED SERVICE

This is to inform you that (insert applicant or Service member's name) must report for military training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to

report for military duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your orders, and include the applicable period you have to return or submit notification of your return to work) while performing military training or duty unless extended by competent military authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

PART 105—EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Sec.

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AUTHORITY: 10 U.S.C. 113 note.

SOURCE: 53 FR 15205, Apr. 28, 1988, unless otherwise noted.

§ 105.1 Purpose.

This part implements Pub. L. 100-180 and reissues Secretary of Defense Memorandum for Secretaries of the Military Departments, "Employment of Spouses of Members of the Armed Forces," October 22, 1987 and Secretary of Defense Memorandum for Secretaries of the Military Departments, "Employment of Spouses of Members of the Armed Forces," December 30, 1987.

§ 105.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components").

§ 105.3 Definitions.

DoD official. Any commander, supervisor, or other military or civilian official of a DoD Component.